

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 135K.4, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 26, “Backflow Prevention Assembly Tester Registration,” Iowa Administrative Code.

The proposed amendments update the current division name, update the definition of “third-party certification agency,” update the product standards referenced in the definition of “backflow prevention assembly” to reflect the current versions of the standards, remove references to past dates for submission of training courses and third-party certification, provide general language cleanup, add language to clarify the current registration fee structure, add language regarding a returned check fee to align the rules with the other rules of the Division of Acute Disease Prevention, Emergency Response and Environmental Health, and add requirements for test kit calibration and record keeping. These amendments resulted from discussions held with a backflow prevention assembly tester stakeholder group.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 18, 2016. Such written comments should be directed to Carmily Stone, Chief of the Bureau of Environmental Health Services, Iowa Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [carmily.stone@idph.iowa.gov](mailto:carmily.stone@idph.iowa.gov).

A public hearing will be held on October 18, 2016, on the fifth floor of the Lucas State Office Building, Room 517/518, from 1 to 3 p.m., at which time persons may present their views either orally or in writing. The public hearing will also be accessible over the teleconference system. The toll-free call-in number is 1-866-685-1580, and the conference code number to enter when prompted is 0009991863. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Persons who require assistive services or devices to observe or participate should contact the Bureau of Environmental Health Services at (515)281-5894 in advance of the scheduled date to request that appropriate arrangements be made.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 135K.

The following amendments are proposed.

ITEM 1. Amend rule **641—26.2(135K)**, definitions of “ABPA,” “ASSE,” “AWWA,” “Backflow prevention assembly” and “Third-party certification agency,” as follows:

“*ABPA*” means the American Backflow Prevention Association, ~~P.O. Box 3051, Bryan, Texas 77805-3051.~~

“*ASSE*” means the American Society of Sanitary Engineering, ~~901 Canterbury Road, Suite A, Westlake, Ohio 44145.~~

“*AWWA*” means the American Water Works Association, ~~6666 West Quinney Avenue, Denver, Colorado 80235.~~

“*Backflow prevention assembly*,” for the purposes of this chapter, means a device or means to prevent backflow into a potable water system for which a method of testing the device in-line has been published by the Foundation of Cross-Connection Control and Hydraulic Research at the University of Southern California.

NOTE: The following assemblies are included under this definition. This is not intended to be an exclusive list. If new devices and test methods are introduced that meet the definition, they are included under the rules.

Backflow Prevention Assembly	Product Standards
Double Check Valve Assembly	ASSE <del>1015-2009</del> <u>1015-2011</u> , AWWA C510-07
Double Check Detector Assembly	ASSE <del>1048-2009</del> <u>1048-2011</u>
Pressure Vacuum Breaker	ASSE <del>1020-2004</del> <u>1020-2011</u>
Reduced Pressure Principle Backflow Preventer	ASSE <del>1013-2009</del> <u>1013-2011</u> , AWWA 511-07
Reduced Pressure Detector Assembly	ASSE <del>1047-2009</del> <u>1047-2011</u>
Spill Resistant Pressure Vacuum Breaker	ASSE <del>1056-2004</del> <u>1056-2013</u>

“Third-party certification agency” means the ABPA, ASSE or another agency approved by the department to certify the knowledge and skills of backflow prevention assembly testers.

ITEM 2. Amend subrules 26.4(1) to 26.4(3) as follows:

**26.4(1) Tester training.**

a. A person or organization that plans to conduct or sponsor a backflow prevention assembly tester training course in Iowa shall apply to the department for approval of the course at least 15 days before the first time the course is held. ~~If a training course was approved before September 15, 2010, the person or organization responsible for the content of the course shall resubmit the information required by 26.4(1)“e.”~~ The application shall include:

(1) to (9) No change.

(10) A \$200 nonrefundable fee. A \$15 returned check fee will be charged for each check returned for insufficient funds.

b. No change.

c. ~~For a course approved after September 15, 2010, the~~ The person or organization responsible for the course content shall submit to the department the information required in paragraph 26.4(1) “a” within 30 calendar days of the fifth anniversary of the initial approval by the department and within 30 calendar days of the anniversary date of each fifth year thereafter. ~~For training courses approved prior to September 15, 2010, the person or organization responsible for the content of the course shall submit to the department the information required in paragraph 26.4(1) “a” within 30 calendar days of October 1, 2011, and within 30 calendar days of October 1 of each fifth year thereafter.~~

d. The course sponsor shall notify the department at least 15 days before an approved training course is started. The notification shall include:

(1) to (3) No change.

(4) A \$50 nonrefundable fee. A \$15 returned check fee will be charged for each check returned for insufficient funds.

e. A training course shall be at least 32 instructional hours, ~~and~~

(1) The training course shall cover at least the following subjects:

~~(1)~~ 1. Backflow definitions, causes and examples.

~~(2)~~ 2. Description of backflow prevention assemblies, their proper application and installation, and their operational characteristics.

~~(3)~~ 3. Description and operational characteristics of test equipment.

~~(4)~~ 4. Techniques for testing backflow prevention assemblies.

~~(5)~~ 5. Troubleshooting of backflow prevention assemblies.

~~(6)~~ 6. Record keeping and the responsibilities of regulatory agencies and the registered tester.

(2) The course shall conclude with a written examination of at least 100 questions and a practical examination of testing techniques on all types of testable backflow prevention assemblies. The time for testing shall be in addition to the required instructional hours. To have successfully completed the

course, the student must achieve a passing mark of at least 70 percent on the written examination and demonstrate proficiency in testing and troubleshooting procedures.

(3) ~~ABPA or other approved~~ Approved third-party certification agency testing may be substituted for the course test.

f. and g. No change.

**26.4(2) Continuing education training.**

a. A person or organization that plans to conduct or sponsor a continuing education course for registered testers in Iowa shall apply to the department for approval of the course at least 15 days before the course is scheduled to begin. The application shall include:

(1) to (7) No change.

(8) A \$50 nonrefundable fee. A \$15 returned check fee will be charged for each check returned for insufficient funds.

b. and c. No change.

**26.4(3) Third-party certification agencies.**

a. An agency that wishes to be a third-party certification agency in Iowa shall submit to the department a request for approval in writing on agency letterhead, signed by an authorized representative of the agency. The request shall include at least the following information:

(1) to (8) No change.

(9) A nonrefundable fee of \$200. A \$15 returned check fee will be charged for each check returned for insufficient funds.

b. No change.

c. A third-party certification agency ~~approved before September 15, 2010,~~ shall submit to the department the information required in paragraph 26.4(3) "a" ~~on or within 30 calendar days before October 1, 2011, and on or within 30 calendar days before October 1 of each fifth year thereafter. A third-party certification agency approved after September 15, 2010, shall submit to the department the information in paragraph 26.4(3) "a" on or within 30 calendar days before the fifth anniversary of the initial approval by the department and on or within 30 calendar days before the anniversary date of every fifth year thereafter.~~

ITEM 3. Amend subrules 26.5(1) and 26.5(2) as follows:

**26.5(1) Initial registration.**

a. A person who has successfully completed an approved training course may register with the department within the 12 months after the date of course completion. A person who is certified may register with the department. The applicant must submit:

(1) and (2) No change.

(3) A nonrefundable fee in accordance with Table 1. A \$15 returned check fee will be charged for each check returned for insufficient funds.

The registration shall expire as shown in Table 1.

Table 1  
Initial Registration Fees

Registration Month	Even Year		Odd Year	
	Fee	Registration Expiration	Fee	Registration Expiration
January - February	\$66	October 31 + one year	\$30	October 31
March - April	\$60	October 31 + one year	\$24	October 31
May - June	\$54	October 31 + one year	\$18	October 31
July - August	\$48	October 31 + one year	\$84	October 31 + two years
September - October	\$42	October 31 + one year	\$78	October 31 + two years
November - December	\$36	October 31	\$72	October 31 + one year

b. A person who has completed a course of training in another state may be registered in Iowa. The person shall submit:

(1) and (2) No change.

(3) A nonrefundable fee in accordance with Table 1. A \$15 returned check fee will be charged for each check returned for insufficient funds.

The registration shall expire as shown in Table 1.

**26.5(2) Renewal registration.**

a. Except as provided in subrule 26.5(1), each registered tester shall renew the registration between July 1 and October 1 of each odd-numbered year. The registered tester shall submit:

(1) No change.

(2) Documentation that the registered tester has completed at least five hours of ~~training in~~ approved continuing education courses after October 31 of the previous odd-numbered year or documentation that the registered tester is certified. Registered testers with an initial registration date of January 1 or later in an odd-numbered year are not required to obtain continuing education prior to renewal in that year.

(3) A nonrefundable fee of \$72. A \$15 returned check fee will be charged for each check returned for insufficient funds.

(4) No change.

b. No change.

ITEM 4. Amend rule 641—26.6(135K) as follows:

**641—26.6(135K) Standards of conduct.**

**26.6(1) and 26.6(2)** No change.

**26.6(3)** A registered tester shall use a differential pressure gauge to field test a backflow prevention assembly. Methods of testing that use other types of equipment, such as but not limited to dual pressure gauges, water columns, or single pressure gauges, shall not be acceptable.

a. The accuracy of a differential pressure gauge used to test backflow prevention assemblies shall be verified no less frequently than every 13 months. The accuracy verification results shall be traceable to the National Institute of Standards and Technology (NIST). Any differential pressure gauge with an error of more than plus or minus 0.2 psi shall not be used to test a backflow prevention assembly.

b. For every test report record retained in accordance with the requirements of subrule 26.6(2), the most recent accuracy verification, for the differential pressure gauge used, performed prior to that test report date shall be retained.

c. The accuracy verification records shall be made available to an authorized representative of the department or by an authorized representative of the administrative authority of the jurisdiction in which the assembly is located.

ITEM 5. Amend rule 641—26.7(135K) as follows:

**641—26.7(135K) Penalty.** A In addition to other sanctions provided in this chapter, a person who violates a provision of this chapter shall be guilty of a simple misdemeanor pursuant to the authority of Iowa Code section 135K.5.

ITEM 6. Amend rule 641—26.8(135K) as follows:

**641—26.8(135K) Denial, probation, suspension or revocation.** This rule pertains to denial, probation, suspension or revocation of registration; denial or revocation of training course approval; and denial or revocation of approval as a third-party certification agency.

**26.8(1)** The department may deny an application for registration or renewal, may place a registration on probation, may suspend or revoke a registration, or may order a registered tester not to test or repair backflow prevention assemblies when the department finds that the applicant or registered tester has committed any of the following acts:

a. to j. No change.

k. Engaging in any conduct that subverts or attempts to subvert a department investigation.

l. Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.

m. Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.

n. Knowingly aiding, assisting or advising a person to unlawfully practice as a backflow prevention assembly tester.

o. Representing oneself as a registered backflow prevention assembly tester when one's registration has been suspended or revoked or when one's registration is lapsed or has been placed on inactive status.

p. Permitting the use of a registration by a nonregistered person for any purpose.

q. Acceptance of any fee by fraud or misrepresentation.

r. Failure to respond within 30 days of receipt, unless otherwise specified, of communication from the department which was sent by registered or certified mail.

**26.8(2)** The department may deny or revoke the approval for a training course or a continuing education course when it finds:

*a. to g.* No change.

h. Failure to comply with these rules.

**26.8(3)** The department may deny or revoke the approval for a third-party certification agency when it finds:

*a. to c.* No change.

d. Failure to comply with these rules.

**26.8(4)** Complaints. Complaints regarding a registered tester, an approved training course or a third-party certification agency shall be made in writing and sent to the department at Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

*a. to d.* No change.

**26.8(5)** Appeals.

*a.* Notice of denial, probation, suspension or revocation of registration; denial or revocation of course approval; or denial or revocation of third-party certification agency approval shall be sent to the affected individual or organization by restricted certified mail, return receipt requested, or by personal service. The affected individual or organization shall have a right to appeal the denial, suspension or revocation.

*b.* An appeal of a denial, probation, suspension or revocation shall be submitted by certified mail, return receipt requested, within 30 days of receipt of the department's notice. The appeal shall be sent to Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the notice of denial, suspension or revocation shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, suspension or revocation. If no appeal is submitted within 30 days, the denial, suspension or revocation shall become the department's final agency action.

*c. to i.* No change.

*j.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent by certified mail, return receipt requested, or by personal service to the department at Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075.

*k.* No change.